

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**OPTUMRX, INC. AND EXPRESS SCRIPTS INC.'S MOTION FOR
THE COURT TO HOLD THE FEBRUARY 28, 2024 STATUS CONFERENCE
ON THE RECORD WITH A COURT REPORTER**

In accordance with MDL Order 2804-69 (Special Master Appointment Order), Federal Rules of Civil Procedure 53 and 79, and 28 U.S.C. § 753, OptumRx and Express Scripts move the Court to hold the upcoming status conference set for February 28, 2024 (1:45 p.m. ET) on the record before a court reporter.

DISCUSSION

“All proceedings . . . had in open court” must be recorded “unless the parties with the approval of the judge shall agree specifically to the contrary.” 28 U.S.C. § 753(b)(2). And “such other proceedings . . . as may be requested by any party to the proceeding” must be recorded. 28 U.S.C. § 753(b)(3); *see also United States v. Robinson*, 459 F.2d 1164, 1170 (D.C. Cir. 1972) (per curiam) (proceedings covered by the Act include “bench conferences” and “arguments of counsel”). Section 753(b)’s requirements are “mandatory,” and courts have a “duty” to meet them. *United States v. Gallo*, 763 F.2d 1504, 1530 (6th Cir. 1985). *Pittsburgh v. Simmons*, 729 F.2d 953, 955 (3d Cir. 1984) (“when counsel desires to go on the record, we can find no reason for a judge to decline to do so”).

The February 28 status conference with the Court will likely cover issues for which OptumRx and Express Scripts want to create a record, including various issues relating to the discovery process.

Accordingly, OptumRx and Express Scripts respectfully move to hold the status conference set for February 28, 2024 (1:45 p.m. ET) on the record before a court reporter.

February 27, 2024.

Respectfully submitted,

/s/ Brian D. Boone

Brian D. Boone

ALSTON & BIRD LLP

Vantage South End

1120 South Tryon Street, Suite 300

Charlotte, NC 28203

Tel: (704) 444-1000

brian.boone@alston.com

William H. Jordan

ALSTON & BIRD LLP

1201 West Peachtree Street NW, Suite 4900

Atlanta, GA 30309

Tel.: (404) 881-7000

bill.jordan@alston.com

Attorneys for OptumRx, Inc.

/s/ Jonathan G. Cooper

Michael J. Lyle

Jonathan G. Cooper

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

1300 I St. NW, Suite 900

Washington, DC 20005

Tel.: (202) 538-8000

mikelyle@quinnemanuel.com

jonathancooper@quinnemanuel.com

Attorneys for Defendant Express Scripts, Inc.

CERTIFICATE OF SERVICE

I certify that that on February 27, 2024, a copy of the foregoing was served on all counsel of record by filing the same with the Court's ECF system.

/s/ Brian D. Boone

Brian D. Boone